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AUTHOR Clay, Nolan
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ABSTRACT

Since state laws prohibiting identification of rape victims were struck down in a 1975 United States Supreme Court ruling, the media have been reconsidering their traditional policy of preserving victims' anonymity. Explaining their decision to begin naming victims in rape trials, several newspapers cite the press's responsibility to provide the public with fair, impartial coverage of everything newsworthy. Maintaining anonymity, they state, implies an unqualified acceptance of the witness's testimony. Those opposed to disclosure, however, believe that the rights of the victim outweigh the public's right to know. Describing the harassment that often follows identification, they suggest that while anonymity prevents humiliating publicity and encourages the reporting of crime, it neither implies the accused's guilt nor increases the number of false reports of assault. While both sides express concern over the stigma associated with being raped, they continue to discuss whether anonymity can harm the victim by perpetuating this stigma. The controversy over naming rape victims is part of a larger debate on the nature of the press's responsibility to the public and the individual. (MM)

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NAMING THE RAPE VICTIM

FREEDOM OF INFORMATION CENTER REPORT NO. 475

This report was written by Nolan Clay, an M.A. candidate at the University of Missouri School of Journalism.

When Carol Kerrigan Plemmons was raped May 17, 1975, she wanted the local newspaper to know about it.

Plemmons, then 27, encouraged The Greenville (S.C.) News to use her name in the story and posed for an accompanying photograph. As she told the paper:

> As soon as it happened, I decided I would tell the world everything about it. I think it is so wrong that a woman should be embarrassed to report when she has been raped. My father told me he would try to keep my name out of the newspaper. I told him I didn't want that. It doesn't matter to me that my name is in the newspaper. We have to start standing up and telling people about these things.[1]

The Greenville News held a staff meeting and consulted an attorney before reaching a decision to publish the woman's name. The story and photo were published on the front page, but only after the paper obtained a signed statement from the victim releasing it from legal responsibility and allowing the News the "unqualified right to reproduce, copyright and circulate the photograph and story."[2]

On the day the woman's account appeared, the paper also published a letter from her father and an editorial explaining its decision. The editorial alerted readers that the paper published the account with mixed feelings. According to the editorial:

> The father's letter and other publicity about the crime, including positive identification of the victim, are published at variance with the normal policy of the Greenville News. We do not identify victims in such cases, unless the public interest urgently requires identification.[3]

The Greenville News's policy is one the print media have long followed. Radio and television stations also rarely identify rape victims in news broadcasts.

This policy of self-censorship is one born of concern for the victims of rape, a concern that disclosing victims' names will cause them further trauma and discourage others from reporting rapes. The press also have given their treatment of rape victims special attention because of the social stigma attached to the crime. Unlike Ms. Plemmons, many rape victims want to keep their identity out of the public eye because of that stigma.

Most news outlets extend this policy to all types of sexual assault, regardless whether the victim is male or female. For years, the press in four states had little choice about their policies on naming rape victims. The states, including South Carolina, made disclosure a crime.

Yet ever since the U.S. Supreme Court struck down prohibitions against identifying rape victims, the media increasingly have reconsidered their traditional policies against naming victims in news accounts. This report looks at the 1975 U.S. Supreme Court ruling permitting the media to print a rape victim's name, at newspapers which have changed their policies about disclosure, at arguments for and against disclosure, and at future trouble spots for the media in this area.

Summary

Since the U.S. Supreme Court struck down prohibitions against identifying rape victims from public records, the media increasingly have reconsidered their policies against naming victims in news accounts.

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COX BROADCASTING v.COHN

The editors at The Greenville News made their decision to identify a rape victim for the first time partly on the strength of a U.S. Supreme Court ruling handed down two months earlier.[4] The court's ruling, **Cox Broadcasting v. Cohn**, established a conditional press right to identify rape victims in news accounts. The high court ruled 8-1 that states may not prohibit the press from naming rape victims when the names are obtained from public records.

Before the ruling, at least two news outlets had run afoul of state laws making it a crime to name rape victims. In Wisconsin, the Madison **Capitol Times** reported the name of a rape victim in its Nov. 16, 1947 issue. A district attorney filed a criminal complaint against **Capitol Times** reporter William T. Evjue for violating a state law against naming victims. After a lower court dismissed the complaint, the Wisconsin Supreme Court reinstated it in a ruling upholding the constitutionality of the law.[5]

The state court, in its July 1, 1948 decision of **State v.Evjue**, upheld the law despite the defendant's objection it was an unconstitutional infringement on free speech. The court countered that it had weighed the benefits of publishing the victim's identity against the situation of the victim and the difficulties prosecutors experience in rape cases. It concluded "there can be no doubt that the slight restriction of the freedom of the press prescribed by (the statute) is fully justified."[6]

The court said the state law was intended to protect victims from embarrassment and offensive publicity which would have a strong tendency to affect their future in society. The court also noted: "It is a well-known fact that many crimes of the character described go unpunished because the victim of the assault is unwilling to face the publicity which would follow prosecution."[7] The court said publication of the victim's name held a minimum of social value and "ministers to a morbid desire to connect the details of one of the most detestable crimes known to the law with the identity of the victim."[8]

In South Carolina, television station **WBTW** of Florence ran into legal trouble for a rape story even though the story never mentioned the victims' names. The story, broadcast in late November 1961, included pictures of a station wagon the suspected rapist had stolen and then abandoned in Florence after attacking two women in a nearby city. The victims, Patricia Nappier and Maxine Gunter, had used the car to travel from school to school to perform puppet shows about proper health and hygiene practices. The women were employed by the state Health Department and were known across the state as "Little Jack Girls."[9]

Because the station wagon shown in the broadcast bore the sign "Little Jack, Dental Division, South Carolina State Department of Health," the two women contended the television station in fact had identified them, a misdemeanor in South Carolina. Basing their case on the state statute, the two women filed suit against the station for invasion of privacy. The women said the identification had caused them embarrassment and humiliation.[10]

The resulting court case of **Nappier v. Jefferson Standard Life Insurance Company** evolved into a test of the South Carolina law. The 4th Circuit Court of Appeals upheld the law Sept. 12, 1963, when it dismissed the station's defense of newsworthiness.

The appeals court first had to settle the issue of identification. The station had argued for a strict interpretation of the law, which prohibited disclosure of the "name of the victim." Since the story did not use the rape victims' names, the station said it had not violated the law. A lower court had accepted that argument and dismissed the lawsuit. The appeals court, however, ruled that "name" and "identity" were synonymous, thus the story did violate the law.[11]

Turning to the station's argument that the news value of disclosure protected it from an invasion of privacy lawsuit, the court said:

> Standard (the station's owner) counters that the incident was a matter of public concern and record and so is exempted from the rule of privacy. . . . The ready replication is that the statute states an exception to the exemption. No matter the news value, South Carolina had unequivocally declared the identity of the injured person shall not be made known in press or broadcast. . . . No constitutional infringement has been suggested.[12]

Two other states — Georgia and Florida — also had enacted laws against naming rape victims in news accounts. The three Southern states adopted their laws about 1900. Wisconsin followed in 1925.[13] The Georgia statute came under scrutiny in the **Cox Broadcasting v. Cohn** case.

Martin Cohn relied upon the Georgia statute when he filed suit against Cox Broadcasting Corp. for violating his right of privacy. Cohn said the corporation's station, **WBS-TV**, violated his privacy when it broadcast the name of his dead daughter during a story about a court hearing for her alleged rapists.

Cynthia Cohn died Aug. 18, 1971, following a drinking party she attended in the Atlanta suburb of Sandy Springs. An autopsy revealed that the 17-year-old young adult had choked on her own vomit. It also showed she had been raped. Seven months after her death, the district attorney brought rape and murder charges against six youths who were present at the drinking party.[14]

Press coverage of these developments had not disclosed Cynthia's name until April 10, 1972, when **WBS-TV** reporter Tom Wassell reported on the accused youths' courtroom hearing. Wassell learned the name from indictments he examined in open court. They were public records available for inspection, as Wassell told the court:

> . . . during a recess of the said trial, I approached the clerk of the court, who was sitting directly in front of the bench, and requested to see a copy of the indictments. In open court, I was handed the indictments, both the murder and the rape indictments, and was allowed to examine

> fully this document. As is shown by the said indictments. . . the name of the said Cynthia Cohn appears in clear type.[15]

WSB-TV broadcast a story on the proceedings for two days. The station used the girl's name and a photograph obtained from her high school yearbook. WSB-TV officials later acknowledged that use of the girl's name violated station policy. It was an oversight, they said.[16]

Nevertheless, when the invasion of privacy lawsuit came to trial, they argued that disclosure was privileged under both state law and the First and Fourteenth Amendments. The station lost in trial court and before the Georgia Supreme Court upon rehearing. The Georgia Supreme Court ruled it could discern "no public interest or general concern about the identity of the victim of such a crime as will make the right to disclose the identity of the victim rise to the level of First Amendment protection."[17]

The U.S. Supreme Court reversed the Georgia court March 3, 1975. The only dissenting justice, William Rehnquist, differed on jurisdictional grounds. Martin Cohn had suffered because of the disclosure. His family endured humiliating taunts and cruel graffiti.[18] Nevertheless, the U.S. Supreme Court noted that crime, and any resulting judicial proceedings, are events of legitimate concern to the public and that the press has a responsibility to report such events. The court also repeated the idea that accurate reports of judicial proceedings warrant special legal protection.

The high court said states cannot prevent the press from publishing information, including the names of rape victims, when that information comes from public records:[19]

> By placing the information in the public domain on official court records, the State must be presumed to have concluded that the public interest was thereby being served. Public records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media. The freedom of the press to publish that information appears to us to be of critical importance to our type of government in which the citizenry is the final judge of the proper conduct of the public business. In preserving that form of government the First and Fourteenth Amendments command nothing less than that the States may not impose sanctions on the publication of truthful information contained in the official court records open to public inspection.[20]

The court's decision, however, was not all good news for the press. The court suggested alternative ways states could keep the press from naming rape victims. Justice Byron White wrote: "If there are privacy interests to be protected in judicial proceedings, the States must respond by means which avoid public documentation or other exposure of private information."[21]

Relying on **Cox Broadcasting v. Cohn** as precedent, a New Mexico appeals court dismissed a $1.42 million lawsuit against the Roswell **Daily Record**, even though a reporter for the paper allegedly had promised at one time to not name the victim. A Texas couple had filed the suit on behalf of their 14-year-old daughter, Renee Poteet, who was kidnapped and sexually assaulted Dec. 19, 1975. A district attorney involved in the case claimed a reporter covering the crime had promised to not publish the girl's name.[22] Subsequent stories did not reveal the girl's name until the suspected assailant was brought up for a preliminary hearing Jan. 6, 1977. A reporter, relying on notes taken at the hearing, described the young girl by name as the victim of the crime.[23]

The parents' lawsuit took a two-pronged approach. First, they alleged that publication of the name was not newsworthy and, therefore, not privileged. Second, they said that even if the publication was privileged, the paper had no right to do so because it had waived its privilege with the promise not to disclose the name.

The appeals court, citing **Cox** and a New Mexico Supreme Court ruling, found "the incident was a matter of public record and was therefore newsworthy. The trial court correctly ruled that the article published in the defendant's newspaper was privileged."[24] Addressing the plaintiff's second claim, the court ruled that such statements, if they were made, did not raise an issue of material fact which would preclude a judgment in favor of the newspaper.[25] The trial court was even more lenient. It had ruled the existence or absence of a newspaper policy is not decisive in limiting the privilege of a paper to publish the victim's identity.[26]

RE-EXAMINATION SLOW

Despite a green light from the U.S. Supreme Court, the press only slowly began to re-examine policies about naming rape victims. One paper noted, ironically, that press reports on the high court's ruling in **Cox** continued to omit the name of the raped girl.[27] Still, the re-examination is underway. Renowned media watcher David Shaw, for example, concluded in an August 12, 1982, Los Angeles **Times** article on rape victim policies:

> What these complicated cases and differences of opinion really prove, many editors say, is that newspaper policies on the identification of the rape victim — like newspaper policies on virtually everything else — must be more flexible. Too often, on the identification of rape victims, newspapers blindly apply rigid policies, without considering individual cases independently.

The National News Council, an independent body of media experts that periodically answers complaints about the press, is championing this re-examination. Last year it called for a major study of community attitudes toward sex crimes and the associated problems of reporting those crimes. The council renewed its call again this year after

ruling that the New York **Post** had violated the privacy of a 14-year-old female rape victim when it published her name and picture. The girl had been gang-raped and left for dead in the Hudson River.[28]

Three Southern newspapers — the Arlington **Northern Virginia Sun**, the Durham (N.C.) **Herald** and the Raleigh (N.C.) **News & Observer** — have sparked the re-examination by adopting policies that favor disclosure of rape victims' identities. The three are the most prominent among a handful of papers regularly identifying rape victims.

The **Northern Virginia Sun** touched off a storm of protest when editor Herman J. Obermayer announced its policy change in a front-page editorial in January 1978. "I assumed I'd get some mail, but I never expected this storm," Obermayer said later.[29] The storm included a resolution by the city council of Falls Church ,Va., withdrawing city advertisements from the newspaper as long as the new policy remained in effect, plus a drive by the Arlington Commission on Women to convince readers to cancel their subscriptions.[30]

Obermayer got no help from local journalism heavyweights. The Washington **Post**'s Ben Bradlee said: "Obermayer's making a big mistake. It's wrong. It's misguided. We wouldn't do it."[31]

The Durham **Herald** underwent similar problems that same year. After police apprehended a man wanted for 11 rapes over a series of months, the **Herald** listed the victims' names on its front page. The paper had not identified the victims when it originally reported the rapes. Editor Michael Rouse explained what happened next:

> The story ignited Durham's Rape Crisis Center, which organized the campaigns to change our policies. There were pickets, petitions cancelled subscriptions, a threatened boycott of our advertisers and . . . an untold number of letters to the editor. We printed the letters for a while, then finally called a halt.[32]

The **Herald** did change its policy slightly. It stopped publishing specific addresses of victims. The paper also produced an 18-part series of editorials explaining the paper's policy to its readers and the reasons the policy change was adopted.[33]

The Raleigh **News & Observer** also had complaints from a local rape crisis center after it adopted a new policy.[34]

As reported in an August 12, 1982, Los Angeles Times article, a fourth newspaper, the Charleston (W. Va.) **Gazette**, found the pressure too much to take. **Gazette** Editor Don Marsh said he reinstituted the old policy of not naming rape victims after a switch to disclosure produced "almost universal external condemnation."

Although the three papers above have perhaps the most lenient policies on disclosure of rape victims, none favor total openness. The Raleigh **News & Observer**, like the Durham **Herald**, name rape victims only if they are not juveniles and if a suspect has been arrested and formally charged.[35] The **Northern Virginia Sun** names victims in its coverage of rape trials, but not if the suspect pleads guilty. The paper also excludes juveniles and the mentally retarded from disclosure.

Many newspapers still cling to the traditional policy of non-disclosure. A September 1982 survey of 375 newspapers found that 42 percent "strongly agreed" that the name of an adult rape complainant should not be reported, another 25 percent "agreed" to that position. Among papers with circulations greater than 50,000, four out of five agreed or strongly agreed adult victims should not be named.[36]

Not unexpectedly, the Kansas State University study on rape coverage found even stronger views when juvenile victims were involved. Sixty-nine percent of the newspapers surveyed "strongly agreed" the name of a minor rape victim should not be reported, another 24 percent "agreed." Among large-circulation papers, only one of the 106 surveyed disagreed with that stance.[37]

Even when the rape victim is a prominent personality, most papers in the survey said the victim's name should not be published. Only 14 percent agreed or strongly agreed that the name of a prominent victim should be used in a story.

Seventy-nine percent of the papers said they had a policy on rape coverage, although 65 percent of the policies were only informal, word-of-mouth ones.[38]

THE DISCLOSURE DEBATE

As with the traditional view against naming rape victims, policies advocating disclosure are born of a concern for the victim. Yet the new policies, according to their proponents, also spring from a concern for the accused and for sound journalistic practices. Under this view, rapes warrant no special treatment. The press has the responsibility to subject criminal procedures, including testimony from a rape complainant, to public scrutiny in order to ensure the proper administration of justice, they argue. The press also has the responsibility to assume a person charged with a crime is innocent until proven guilty. Those favoring disclosure argue the press abdicates those responsibilities by following traditional policies against publishing rape victims' names. Michael Rouse wrote:

> They (newspapers following the traditional view) are all-protective of the rights of the accused in every other instance. There is, rightly, no end to their suspicion of the police, the courts and other forces of the state which are up against him. But if his charge happens to be rape, their faith in the system is absolute. It is so complete that they can lay aside for his case basic, objective, news judgment. They do not consider that a man accused of rape can be innocent, that perhaps he is a victim, and not a perpetrator, that someone has made an honest mistake or for some reason is prosecuting him maliciously.[39]

Editor Obermeyer echoed that concern for proper press scrutiny of the criminal process. He charged the press removes a great deterrent to perjured and inaccurate testimo-

ny wh n it allows the complaining witness to testify anonymously. Obermayer said the press' policy made it easy for a complaining witness to testify irresponsibly, and thus led to rape convictions on bad evidence for many Southern blacks during the first half of the century.[40]

Obermayer also said the press' concern for the accused should outweigh concern for the victim because of the severity of the punishment in rape cases. "[illegible]anced trial coverage," he editorialized, "where a life sentence may be at stake must be weighed against embarrassing and emotionally scarring a witness. They don't weigh out evenly."[41]

The press fails to assume an alleged rapist is innocent, supporters of disclosure argue, by giving the accuser anonymity. The press arguably compounds the problem by automatically labeling the accuser a "victim," a matter for the courts to decide. Obermayer wrote: "Protecting the accuser's anonymity, while fully identifying the accused, is tantamount to a pre-trial assumption of guilt. Courtroom reporting should be neutral and independent."[42]

Under the view advanced by Obermayer, the embarrassment and humiliation felt by rape victims does not justify withholding their names. "Stabbing, mugging, robbery and kidnapping victims also suffer emotional and psychological trauma. But they get no special press treatment."[43]

In fact, disclosure advocates contend, the special treatment afforded rape actually is damaging to the victim. Anonymity perpetuates the stigma associated with rape, they argue. Anonymity fuels the belief that the victim, usually a woman, somehow was responsible for the rape. Sociologist Gilbert Geis studied media treatment of rapes and concluded the traditional policy of non-disclosure did contribute to the stigma. Geis noted in his study for the National Center for the Prevention and Control of Rape that, despite the trade-offs, he favored disclosure:

> I believe that anonymity plays directly into the sniggering innuendos that surround rape and make it a special kind of criminal offense today. Anonymity is founded on the view that there is someting degrading about being raped, someting very different from being the victim of a robbery or burglary. The anonymity provision suggests that the public will in some subtle or not so subtle manner conclude that the victim in a way contributed to her own fate, that therefore it will think less of her, and that her reputation will be compromised.[44]

Geis, a professor at the University of California at Irvine, said any campaign aimed at removing the stigma "could be seriously undermined by the anonymity provisions that push rape into shadowy status."[45] Geis' ideas are contrary to the traditional reasons given for not naming rape victims. His ideas have not set well with some journalists.

Journalism Professor Zena McGlashan of the University of North Dakota argued that society isn't ready for the press to change its traditional policies on rape coverage. Society does not change its attitudes rapidly, she said. Although attitude changes are occurring, the stigmatization of rape still prevails. Human nature, she argued, precludes the possibility policies for disclosure will influence any rapid removal of the stigma. In a recent article for an American Society of Newspaper Editors publication, she wrote:

> Society should be rid of its 'hangups' about the criminal act of rape and its edgy attitudes toward rape victims, just as women should become stronger physically and in their attitudes toward themselves. In reality, we aren't there yet. And the weight of evidence indicates it's going to take a long time and much more counseling, education and judicious reporting about both victims' ordeals and rapists' motives before rape becomes a routine news event. By then — after many years of concentrated effort — perhaps we'll see substantial attitude change and, even more ideally, a significant decline in the incidence of the crime itself.[46]

Beverly Keer, executive editor of the Grand Forks (N.D.) **Herald** and former associate editor of the Minneapolis **Tribune**, agreed it isn't the time to start naming rape victims. "I don't think we've gotten to that point yet," she said, because disclosure means "the victim has become victimized twice."[47]

Naming the rape victim interferes with a victim's pschological recovery, according to Margaret Gordan, former news professional and chairwoman of an advisory committee to the National Center for the Prevention and Control of Rape. "She needs to be able to control who knows about the rape."[48]

At least one woman journalist, however, thinks it is time to identify rape victims. "As long as we do not report the names of the victims, we are perpetuating the mythology that the rape victim is somehow to blame for what happened to her, which is just dead wrong," Eileen Shanahan told the Los Angeles **Times** in an Aug. 12, 1982, article. Shanahan, senior assistant managing editor for the Pittsburgh **Post-Gazette**, said the only way to get rid of the "wrong-headed" concept is to treat rape like any other crime.

TRADITIONAL ARGUMENTS

Whether they perpetuate the stigma or not, advocates of non-disclosure say news outlets that opt for traditional treatment of rape victims have decided the rights of the rape victim, in most instances, are more important than the public's need to know. These outlets accept the idea that naming victims will bring them further trauma and discourage others from reporting the crime. When papers changing their policies attracted national attention in 1978, the Washington **Post** said in a Feb. 15, 1978, editorial:

> All this, in our view as well as in the view of most newspapers, outweighs any particular usefulness the identifications of the victims might have . . . .(W)e will continue to withhold the names of rape victims as a matter of policy and taste and because we think the rights of the victim

> to privacy far outweigh the public's 'right to know.'

Most members of the press who follow the traditional policy make an exception when the victim is prominent or has died in the attack. The press did not withhold Connie Francis' name, for instance, when she was raped. The New York **Times** wrote Feb. 12, 1975, that it is reluctant to print names of rape victims, but does so if the victim is prominent or "wants her name to be used to alert the community."

Some of the trauma victims feel springs from the stigma of rape — the stereotype that attributes much of the blame for the rape to female victims. Naming the victim can increase the impact of the stigma in some cases. A Raleigh, N.C., rape counselor recalled what happened after the Raleigh **News & Observer** named a victim in a May 22, 1981, article.

> The victim receives six phones call today. For the next two weeks people with whom she worked, people at the treatment center where she went for help, casual acquaintances, and neighbors ask her about the article. Within three days she had left her job. She did not feel comfortable with the co-workers knowing about the rape, particularly since their impression from reading the article was that she may have falsely accused someone of rape.[49]

Publication of victims' names also violates their right of privacy. As one counselor put it:

> Not only is the woman frightened that her assailant will return in retaliation, but she is placed in the position of receiving further trauma. Many victims of sexual abuse receive harassing or threatening phone calls as a result of publicity, and there have been cases in which other men who have learned of the case and the identity of the victim have found her and sexually assaulted her again.[50]

The parents of Renee Poteet, the 14-year-old victim, named in the Roswell **Daily Record**, said that because of the publication of her name, the family suffered "mental stress, apprehension, and suffering," and were subjected to "public disgrace and ridicule." They said that because of the publicity, they were forced to leave Roswell for Texas.[51]

Granting rape victims anonymity also encourages other victims to report incidents to police, it is argued. Rape already is one of the most underreported major crimes. In 1977, the Law Enforcement Assistance Administration surveyed 60,000 homes and concluded 154,000 rapes occurred that year nationwide. Approximately 58 percent had been reported to police.[52] Women working with rape victims believe that at least 90 percent of rapes are never reported, according to one study.[53] Susan Brownmiller, author of **Against Our Will: Men, Women and Rape**, put the number of reported rapes as low as one in 20.[54]

The desire to avoid publicity is one of the reasons prosecutors most often cite to explain the underreporting of rapes. Although not all editors share that belief, many withhold names anyway. One editor, responding to the Kansas State survey, wrote:

> I tried having us use the names of rape victims (well, one rape victim) during the trial. I was called by spokesmen for the National Organization for Women, the prosecuting attorney and the presiding judge. Each said that using the woman's name would cause future victims not to complain. So I stopped. But I think that their view is wrong.[55]

Rouse, editor of the Durham **Herald**, countered that if publishing rape victims' names did discourage women from reporting rapes, it was "an unfortunate but necessary trade-off."[56]

Defenders of the traditional policy assert it does not imply the accused rapist is guilty. The public recognizes that the press grants anonymity to the victim because of the special nature of rape, they argue, not because of an implicit judgment the accused is guilty.

They also argue the traditional policy does not allow a woman to "cry rape." "This is yet another myth that takes the blame from the accused and places it on the victim," rape counselor Karla S. Miller told the Des Moines **Register** in a March 5, 1982, article. "Woman simply do not 'cry rape.'" Miller said false reports of rape are low because law enforcement officials require an iron-clad case. Also, medical procedures associated with rape are extensive and difficult to fool.

CLOSING THE DOOR

While the debate about identifying rape victims continues, states are moving to close the door the U.S. Supreme Court opened in **Cox Broadcasting v. Cohn**. In Kentucky, the state press association in 1980 ended a legislative threat to prohibit public inspection of arrest records in sex-crime cases by reaffirming its policy of not publishing names of rape or other sex-crime victims except under extraordinary circumstances. Legislators had been upset about the publication of victims' names in two small Kentucky newspapers.[57]

Two years ago, the California legislature considered a bill that would have prohibited police from making public the names of any crime victims. Intended to protect victims from harassment, the bill died in a legislative committee.

Michigan succeeded for a while in its attempt to shield sex-crime victims from publicity. A state law allowed courts to order the names of victims and the accused in sex crimes suppressed until the accused was arraigned or charges were dismissed. The law included preliminary hearings. Television station **WXYZ-TV** violated a suppression order in September, 1977, when it broadcast a story about a Catholic priest charged with criminal sexual conduct. District Judge Michael Hand had warned the station

earlier that day that his suppression order, issued at the request of the priest, applied to everyone. But the station broadcast the story on its 11 p.m. news program. The station then filed suit to keep the judge from enforcing the order.[58]

The Midland (Mich.) **Daily News** also challenged suppression orders based on the law. The paper complained the orders were unconstitutional prior restraints on the press and violated its right of access to criminal trials.[59]

The 6th U.S. Circuit Court of Appeals — ruling on the suit brought by **WXYZ-TV** — held Aug. 19, 1981, that the suppression order was an unconstitutional prior restraint. The law, the court said, violated the First Amendment because it allowed issuance of a suppression order without a hearing in a state district court.[60]

On another level, the press, when allowed to name the victim, face the danger they may not be able to attend rape trials or preliminary hearings. Courts have closed trials for some of the same reasons given in support of policies against naming victims. Lower courts have produced a spate of conflicting decisions about whether trial courts can exclude the press. The New Hampshire Supreme Court ruled Nov. 23, 1977, that a lower court erred when it closed a probable-cause hearing for a man charged with sex crimes involving male minors. Significantly, the state's high court based its ruling in part on a promise by the newspaper not to disclose the names of the victims.[61]

However, a New York Supreme Court upheld a lower court's decision to close a courtroom during the testimony of the complaining witness because she was distraught and embarrassed by the nature of her testimony. In a September 1981 decision, the court said:

> . . . there is sound precedent for allowing closure where necessary to protect the witness from undue intimidation or embarrassment, to foster complete, honest testimony, and to protect the efforts of law enforcement.[62]

The North Carolina Supreme Court issued a similar ruling in April 1981, after a trial court excluded the press during the testimony of a 7-year-old female rape victim.[63] But the Kentucky Supreme Court ruled in June 1980 that the embarrassment and emotional trauma that juvenile sex-crime victims might suffer while testifying did not justify exclusion of the press.[64]

The U.S. Supreme Court cleared up some of the confusion in a June 23, 1982, ruling. The court held 6-3 in **Globe Newspaper v. Superior Court** that a Massachusetts statute making mandatory the closure of rape trials during the testimony of minor victims violated the First Amendment. The statute was designed to protect minor sex-crime victims from further trauma and embarrassment and to encourage other victims to report incidents to the police. The court found the first interest compelling, but said the desire to protect such victims did not justify mandatory closure. The Massachusetts law, the court said, "requires closure even if the victim does not seek the exclusion of the press and general public, and would not suffer injury by their presence."[65]

The court ruled the second justification offered for closure — encouraging other victims to come forward — was speculative and questionable common sense. The press, it noted, still had access to other sources for an account of the victim's testimony.[66]

The court was careful to note that its ruling intimated no view regarding the constitutionality of statutes allowing a judge to close the court at his discretion during a minor rape victim's testimony.[67] Significantly, the two minor victims involved apparently told the prosecuting attorney they wouldn't object to the press being present if they could obtain a guarantee the press would not attempt to interview them or publish their names, photographs or any personal information.[68]

As the various cases, controversies and comments indicate, there is marked disagreement about the proper press approach toward naming rape victims. Earlier state attempts to prohibit the naming of victims did encroach upon press freedoms. Yet even with the Supreme Court's ruling that the press may publish names obtained from public records, many newspapers continue to withhold victims' names. The rationale for withholding names has been contested, suggesting that good intentions sometimes may produce unforseen, counter-productive results. The ultimate issue that must be addressed by media personnel is one of responsibility. As mentioned above, virtually all media withhold names of certain victims — such as minors and the mentally retarded. The "freedom" to publish names of adult victims demands serious contemplation about the results — both societal and individual — of such publication. Opinions about what constitutes responsible action differ. But the debate highlights the dilemma facing the media. Decisions about press conduct — whether constitutionally based or self-imposed — raises basic, sometimes conflicting, issues of freedom and responsbility, of service to community and individual justice.

FOOTNOTES

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2. Carla Marie Rupp, "Rape victim's picture and name front paged," **Editor & Publisher**, May 31, 1975, p. 8.
3. Ibid.
4. Ibid.
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9. **Nappier v. Jefferson Standard Life Insurance Company**, 322 F. 2d 502 (1963).
10. Ibid, p. 504.
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13. **The Tennessee Press**, June 1975, p. 9.
14. "The Right to Privacy," **Newsweek**, March 17, 1975, p. 66.
15. **Cox Broadcasting v. Cohn**, 1 Med.L.Rptr. 1819, 420 U.S. 469 (1975).
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17. **Cohn**, p. 1821.
18. **Newsweek**, p. 66.
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41. "Northern Virginia Sun to Print the Names of Rape Complainants," **SNPA Bulletin-News**, Jan. 16, 1978, p. 3.
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60. **WXYZ, Inc. v. Hand**, p. 425-426.
61. **Keene Publishing v. Keene District Court**. 3 Med.L.Rptr. 1595 (1977).
62. **New York v. Jones**, 7 Med.L.Rptr. 2099 (1981).
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65. **Globe Newspaper v. Superior Court**, 8 Med.L.Rptr. 1695 (1982).
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